

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CARLOS FLORES,

Plaintiff,

**ANSWER OF DEFENDANT  
CITY OF NEW YORK TO  
PLAINTIFF'S COMPLAINT**

-against-

CITY OF NEW YORK, and JOHN AND JANE DOES 1  
Through 10, individually and in their official capacities,  
(the names John and Jane Doe being fictitious, as the true  
names are presently unknown),

07 Civ. 6388 (RJH)

Defendants. Jury Trial Demanded

----- X  
Defendant City of New York by its attorney, Michael A. Cardozo, Corporation  
Counsel of the City of New York, for their answer to the Complaint ("Complaint"), respectfully  
alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiff purports to proceed as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except admits that plaintiff purports to proceed as stated therein.
3. Denies the allegations set forth in paragraph "3" of the complaint, except admits that plaintiff purports to invoke the jurisdiction of this Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the complaint, except admits that plaintiff purports to base venue as stated therein.
5. Paragraph "5" sets forth a demand for a jury trial, rather than an averment of fact, and accordingly no response is required.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint.

7. Admits the allegations set forth in paragraph "7" of the complaint.

8. Paragraph "8" of the complaint states a legal conclusion to which no response is required, except admits that the City maintains a Police Department, and respectfully refers the Court to the New York City Charter and the Administrative Code for a recitation of the relationship between defendant City and the New York City Police Department.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

10. Denies the allegations set forth in paragraph "10" of the complaint.

11. Denies the allegations set forth in paragraph "11" of the complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the complaint.

13. Denies the allegations set forth in paragraph "13" of the complaint.

14. Denies the allegations set forth in paragraph "14" of the complaint.

15. Denies the allegations set forth in paragraph "15" of the complaint, except admits that plaintiff was taken to Metropolitan Hospital.

16. Denies the allegations set forth in paragraph "16" of the complaint.

17. Denies the allegations set forth in paragraph "17" of the complaint.

18. Denies the allegations set forth in paragraph "18" of the complaint.

19. Denies the allegations set forth in paragraph "19" of the complaint.

20. In response to the allegations set forth in paragraph “20” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “19” inclusive of this answer, as if fully set forth herein.

21. Denies the allegations set forth in paragraph “21” of the complaint.

22. Denies the allegations set forth in paragraph “22” of the complaint.

23. Denies the allegations set forth in paragraph “23” of the complaint.

24. Denies the allegations set forth in paragraph “24” of the complaint.

25. Denies the allegations set forth in paragraph “25” of the complaint.

26. In response to the allegations set forth in paragraph “26” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “25” inclusive of this answer, as if fully set forth herein.

27. Denies the allegations set forth in paragraph “27” of the complaint.

28. Denies the allegations set forth in paragraph “28” of the complaint.

29. In response to the allegations set forth in paragraph “29” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “28” inclusive of this answer, as if fully set forth herein.

30. Denies the allegations set forth in paragraph “30” of the complaint.

31. Denies the allegations set forth in paragraph “31” of the complaint.

32. Denies the allegations set forth in paragraph “33” of the complaint.<sup>1</sup>

33. In response to the allegations set forth in paragraph “34” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “32” inclusive of this answer, as if fully set forth herein.

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<sup>1</sup> Plaintiff's Complaint does not contain a paragraph numbered “32.”

34. Denies the allegations set forth in paragraph “35” of the complaint.

35. Denies the allegations set forth in paragraph “36” of the complaint.

36. In response to the allegations set forth in paragraph “37” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “35” inclusive of this answer, as if fully set forth herein.

37. Denies the allegations set forth in paragraph “38” of the complaint.

38. Denies the allegations set forth in paragraph “39” of the complaint.

39. In response to the allegations set forth in paragraph “40” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “38” inclusive of this answer, as if fully set forth herein.

40. Denies the allegations set forth in paragraph “41” of the complaint.

41. Denies the allegations set forth in paragraph “42” of the complaint.

42. Denies the allegations set forth in paragraph “43” of the complaint.

43. Denies the allegations set forth in paragraph “44” of the complaint.

44. Denies the allegations set forth in paragraph “45” of the complaint.

45. Denies the allegations set forth in paragraph “46” of the complaint.

46. Denies the allegations set forth in paragraph “47” of the complaint.

47. Denies the allegations set forth in paragraph “48” of the complaint and its subparts.

48. Denies the allegations set forth in paragraph “49” of the complaint.

49. In response to the allegations set forth in paragraph “50” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “48” inclusive of this answer, as if fully set forth herein.

50. Denies the allegations set forth in paragraph “51” of the complaint, except admits that a document purporting to be a notice of claim was received by the City of New York on or about September 18, 2006.

51. Denies the allegations set forth in paragraph “52” of the complaint, except admits that a document purporting to be a notice of claim was received by the City of New York on or about September 18, 2006.

52. Denies the allegations set forth in paragraph “53” of the complaint, except admits that this action commenced on or about July 13, 2007.

53. Paragraph “54” of the complaint states a legal conclusion to which no response is required.

54. Paragraph “55” of the complaint states a legal conclusion to which no response is required.

55. In response to the allegations set forth in paragraph “56” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “54” inclusive of this answer, as if fully set forth herein.

56. Denies the allegations set forth in paragraph “57” of the complaint.

57. Denies the allegations set forth in paragraph “58” of the complaint.

58. In response to the allegations set forth in paragraph “59” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “57” inclusive of this answer, as if fully set forth herein.

59. Denies the allegations set forth in paragraph “60” of the complaint.

60. Denies the allegations set forth in paragraph “61” of the complaint.

61. In response to the allegations set forth in paragraph “62” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “60” inclusive of this answer, as if fully set forth herein.

62. Denies the allegations set forth in paragraph “63” of the complaint.

63. Denies the allegations set forth in paragraph “64” of the complaint.

64. Denies the allegations set forth in paragraph “65” of the complaint.

65. Denies the allegations set forth in paragraph “66” of the complaint.

66. Denies the allegations set forth in paragraph “67” of the complaint.

67. In response to the allegations set forth in paragraph “68” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “66” inclusive of this answer, as if fully set forth herein.

68. Denies the allegations set forth in paragraph “69” of the complaint.

69. Denies the allegations set forth in paragraph “70” of the complaint, except admits that plaintiff was arrested.

70. Denies the allegations set forth in paragraph “71” of the complaint.

71. Denies the allegations set forth in paragraph “72” of the complaint.

72. In response to the allegations set forth in paragraph “73” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “71” inclusive of this answer, as if fully set forth herein.

73. Denies the allegations set forth in paragraph “74” of the complaint.

74. Denies the allegations set forth in paragraph “75” of the complaint.

75. In response to the allegations set forth in paragraph “76” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “74” inclusive of this answer, as if fully set forth herein.

76. Denies the allegations set forth in paragraph “77” of the complaint.

77. In response to the allegations set forth in paragraph “78” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “76” inclusive of this answer, as if fully set forth herein.

78. Denies the allegations set forth in paragraph “79” of the complaint.

79. In response to the allegations set forth in paragraph “80” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” to “78” inclusive of this answer, as if fully set forth herein.

80. Denies the allegations set forth in paragraph “81” of the complaint.

81. Denies the allegations set forth in paragraph “82” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

82. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

83. Defendant City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

84. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct and/or the intervening conduct of third parties, and was not the proximate result of any act of the defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

85. Plaintiff has failed to comply, in whole or in part, with conditions precedent to suit under state law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

86. Plaintiff provoked any incident.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

87. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

88. There was probable cause to arrest and prosecute plaintiff.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

89. To the extent that the complaint alleges any claims against the City of New York arising under state law, such claims are barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

90. Plaintiff cannot obtain punitive damages as against the City of New York.

**AS FOR A TENTH AFFIRMATIVE DEFENSE**

91. At all times relevant to the acts alleged in the complaint, defendant City of New York acted reasonably in the proper and lawful exercise of its discretion.



**WHEREFORE**, defendant City of New York requests judgment dismissing the Complaint, as against it with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
October 12, 2007

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendant City of New York  
100 Church Street  
New York, New York 10007  
(212) 788-8084

By: David M. Hazan  
David M. Hazan (DH-8611)  
Assistant Corporation Counsel  
Special Federal Litigation Division

To: **BY FIRST CLASS MAIL**  
Brett H. Klein, Esq.  
Attorney For Plaintiff  
Leventhal & Klein LLP  
45 Main Street, Suite 820  
Brooklyn, New York 11201

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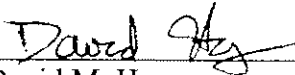
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
CARLOS FLORES,  Plaintiff,  -against-  CITY OF NEW YORK, and JOHN AND JANE DOES 1 Through 10, individually and in their official capacities, (the names John and Jane Doe being fictitious, as the true names are presently unknown),  Defendants.
<b>ANSWER TO COMPLAINT BY DEFENDANT CITY OF NEW YORK</b>
<b>MICHAEL A. CARDOZO</b> <i>Corporation Counsel of the City of New York</i> <i>Attorney for Defendants City of New York</i> <i>100 Church Street</i> <i>New York, N.Y. 10007</i>  <i>Of Counsel: David M. Hazan</i> <i>Tel: (212) 788-8084</i>
<i>Due and timely service is hereby admitted.</i>  <i>New York, N.Y. ...., 2007.</i>  <i>..... Esq.</i>  <i>Attorney for .....</i>

**DECLARATION OF SERVICE BY ECF AND FIRST-CLASS MAIL**

I, David M. Hazan, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that on October 12, 2007, I served the annexed Answer of Defendant City of New York, by depositing a copy of the same, enclosed in a first-class postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, upon the following:

Brett H. Klein, Esq.  
Attorney For Plaintiff  
Leventhal & Klein LLP  
45 Main Street, Suite 820  
Brooklyn, New York 11201

Dated: New York, New York  
October 12, 2007

  
\_\_\_\_\_  
David M. Hazan  
Assistant Corporation Counsel  
Special Federal Litigation Division